LEGAL ASPECTS OF GENDER EQUALITY IN THE LABOUR MARKET

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Abstract: The article elaborates on existing international standards for gender equality in the labour market and the main challenges that cause its insufficient effectiveness. The object of the research is the norms of international law establishing human rights standards related to ensuring gender equality in the labour market at the worldwide level through the UN system and, in particular, such legal instruments as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), and the ILO jurisprudence.

The research methodology is based on a comprehensive approach, including an analysis of acts of international law, case law of relevant international organisations, and authorities. *Inter alia* the following methods of scientific knowledge were used in the research: (i) general methods, in particular: scientific abstraction, analysis, synthesis, generalisation, comparison, principles of dialectics and formal logic, historical and systemic approaches; (ii) specific methods, in particular: method of comparative legal research.

Based on the research conducted, three main contemporary challenges for the legal regulation of gender aspects of the labour market were identified:

(i) the historically determined predominant use of binary perception of sex as a basis for gender discrimination, including in the labour market. Despite the existence of positive implementation practices of HRC, the ILO and CEDAW legal concepts on sex-based and gender-based discrimination should be further developed through both holistic theoretical analysis and the incorporation of relevant legal norms into acts of "hard" international law;

(ii) the legal status of men with family responsibilities does not have enough legal regulation on the level of obligatory international guarantees, therefore, subsequent international law should to be adopted;
(iii) enforcement mechanisms are weak enough and their implementation is often conditional on the "goodwill" of a State concerned without the possibility of international external enforcement (with the exception of certain ILO mechanisms, which are, however, procedurally difficult to enforce due to the tripartite system of organisation).

Keywords: labour, gender, sex, international labour standards, international law

Introduction

The legal regulation of gender equality issues related to the labour market is an inherent part of international labour and human rights law as well as municipal law. The latter, according to *pacta sunt servanda* as a binding general principle of international law (the ICJ Statute, 1945, Art. 38 (1) (c)) and Article 26 of the Vienna Convention (the Vienna Convention, 1969), must be consistent with international law. At the same time, contemporary economic and legal perspectives, despite the recognition of gender equality in labour relations as a universally accepted standard and goal *inter alia* by 5 Sustainable Development Goal "Achieve gender equality and empower all women and girls" (Transforming Our World: the 2030 Agenda for Sustainable Development (UNGA, 2015)), still do not effectively implement this principle. The article aims to analyse the existing international legal regulation of issues of ensuring gender equality in labour relations, including protection mechanisms, and identify the main challenges that cause its insufficient effectiveness. As a necessary preliminary remark for further analysis, it should be noted that the international legal regulation of human rights in relation to gender aspects of the labour market is based on an anti-discrimination model. The content of it is largely historically determined and only recently has its "living" interpretation by international bodies corresponding the specific legal instruments begun to be observed.

Typology of international legal standards

There is an extensive system of worldwide gender equality international legal standards that can be divided into two categories depending on the degree of target relevance for the labour market:

(i) applicable (general) standards;
(ii) related (targeted) standards.

Applicable (general) standards are norms of international law relating to the prohibition of discrimination in all areas, including the prohibition of discrimination against women. For example, the Universal Declaration of Human Rights (the Universal Declaration, 1948, Art. 7) (hereinafter — *the Universal Declaration*), the International Covenant on Civil and Political Rights (the ICCPR, 1966, Art. 26) (hereinafter — *the ICCPR*); the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW, 1979, Art.(s) 1–6) (hereinafter — *the CEDAW*). Related (targeted) standards are norms of international law relating to the prohibition of gender discrimination in the labour market. For example, the Universal Declaration (Art. 23), the ICCPR (Art. 26); the International Covenant on Economic, Social and Cultural Rights (the ICESCR, 1966, Art.(s) 2(2); 6-8) (hereinafter — *the ICESCR*); the CEDAW (Art. 11), etc. As follows from the above, some acts of international law may simultaneously contain standards of both categories.

Depending on the content, worldwide international gender equality legal standards applicable to the labour market can be classified into three categories:

(i) general non-discrimination standards;

(ii) specific non-discrimination standards that are related to the labour market;

(iii) specific non-discrimination standards that are related to the gender ground.

Further in the article, all three content categories of standards will be elaborated in detail.

Additionally, to worldwide international gender equality legal standards, there are regional legal standards, for example, the European human rights system, Inter-American human rights system, etc.

General non-discrimination standards

The fundamental international legal act that establishes a general non-discrimination standard applicable inter alia to the labour market is the Universal Declaration (1948). According to the preamble of the Universal Declaration, this document is a "common standard of achievement for all peoples and all nations". Based on the lexical interpretation of the term "standard", States and individuals are imperatively obliged to take "progressive measures" to ensure universal and effective recognition and observance of the rights proclaimed by the Declaration. Despite the fact that the Universal Declaration was initially legally related to "soft" law and had a recommendatory nature, due to its special nature as the first universal international legal act in the history of mankind, which proclaimed fundamental human rights and became the basis for other international human rights law treaties, its norms have acquired the status of customary international law and, therefore, a binding normative character (the ICJ Statute, 1945,

Art. 38 (1) (b)). The Universal Declaration prohibits discrimination in entitlement of "all rights and freedoms set forth in this Declaration" based *inter alia* on the sex by Art. 2 and as enforcement legal instrument — by Art. 7.

The enforcement mechanisms for the Universal Declaration (1948) have been integrated mainly into enforcement mechanisms for the ICCPR (1966) and the ICESCR (1966) as a general underlying basis for the human rights they established and the specific subject of the Universal Periodic Review (hereinafter — *the UPR*) (UN Human Rights Council, 2006).

The ICCPR (1966) which, together with the Universal Declaration (1948), forms part of the International Bill of Human Rights, is the second international legal act that enshrined general non-discrimination standards by prohibiting all forms of discrimination including those based on sex (the ICCPR, Art. 26; General Comment № 28. Article 3 (The equality of rights between men and women) (the HRC, 2000); General comment №18: Non discrimination (the HRC, 1989)) and out on States negative and positive obligations in nature (General Comment No. 31 [80]. The Nature of the General Legal Obligation (the HRC, 2004)). It is a general guarantee that does not depend on the category of specific rights protected (Taylor, 2020, p. 729; Nowak, 2005, p. 600). It also should be noted that the Human Rights Committee (hereinafter — *the HRC*) uses a broad interpretation of sex that includes also sexual orientation (*Toonen v. Australia*, 1994, para.(s) 8.6–8.7; *Edward Young v. Australia*, 2003, para. 10.4; X *v. Colombia*, 2007, para. 7.2; Simm (2020)).

The main enforcement mechanisms related to the prohibition of gender discrimination in the labour market established by the ICCPR are the following: (i) State and "shadow" reporting on the compliance with the ICCPR obligations (the ICCPR, 1966, Art. 40); (ii) State and "shadow" reporting on the implementation of the ICCPR under the UPR; (iii) individual communication by victims of a State's violation of its obligations under the ICCPR (in the case of State's ratification of the Optional Protocol to the ICCPR (Optional Protocol to the ICCPR, 1966); (iv) interstate communication in the case of separate recognition by a responsible State of such competence by the HRC; (v) communications under the special procedures of the UN Human Rights Council to the special rapporteur or working group (country-specific or thematic, e.g. Working Group on Discrimination against Women and Girls).

Specific non-discrimination standards that are related to the labour market

The Universal Declaration (1948) also contains specific non-discrimination standards relating to the labour market. Article 23 of the Universal Declaration enshrines a complex of labour rights: the right to (i) work, to free choice of employment, to just and favourable conditions

of work and to protection against unemployment; (ii) equal pay for equal work; (iii) just and favourable remuneration; (iv) form and join trade unions. The non-discrimination clause is complex and includes general provisions of Art. 2 of the Universal Declaration and the use of the pronoun "everyone" by Art. 23.

The ICESCR (1966) is a binding international treaty (the Vienna Convention, 1969, Art. 26; the ICJ Statute, 1945, Art. 38(1) (a)) that includes a complex of protected labour rights: the right to (i) work, "which includes the right to the opportunity to gain his living by work which he freely chooses or accepts" (Art. 6); (ii) the right to "the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration, safe and healthy working conditions, equal opportunity to be promoted and rest", leisure guarantees (Art. 7); (iii) form and to join trade unions, including the corresponding trade unions' rights (Art. 8). The non-discrimination clause is complex and includes general provisions of: Art. 2(2) of the ICESCR as the prohibition of all kinds of discrimination in the enjoyment of rights set forth by the ICESCR in depend on sex and Art. (3) that specifies the antidiscrimination guarantee in relation to "men and women"; and special provisions of Art.(s) 6–8 that as specific labour guarantees use of the pronoun "everyone". The specific legal significance of the ICESCR is the additional stress of the prohibition of discrimination against women as a general requirement of Art. 3 and in relation to remuneration for work and working conditions (Art. 7 (a) (ii)).

The system of the ICESCR jurisprudence also includes several instruments of "soft" law such as general comments of the Committee on Economic, Social and Cultural Rights (hereinafter — *the CESCR*): (a) *in relation to the general prohibition of discrimination* to all rights protected by the ICESCR: (i) General comment № 20. Non-discrimination in economic, social and cultural rights (the CESCR (2009)); General comment № 16 (2005). The equal right of men and women to the enjoyment of all economic, social and cultural rights (the CESCR (2005)); (b) *in relation to labour rights*: General comment № 23 (2016) on the right to just and favourable conditions of work (the CESCR (2016)); (ii) General comment № 18 on the right to work (the CESCR (2005)). The legal significance of the General Comments as means of interpretation of the ICESCR provisions (the Vienna Convention, 1969, Art. 31; the ICJ Statute, 1948, Art. 38 (1) (d)) is based on provisions of Art. 21 of the ICESCR, subsequent competence of the CESCR established by ECOSOC resolutions 1985/17 (ECOSOC, 1985) and 1979/43 (ECOSOC, 1979), and obligation of implementation of the ICESCR based on the principles *pacta sunt servanda* and treaty interpretation in good faith (the Vienna Convention, 1969, Art.(s) 26, 31). Otherwise, it would be legally and practically nonsensical to endow ECOSOC with the right to make general comments (which were then delegated to the CESCR).

The non-discrimination provisions of the ICESCR (1966) are the obligations of States that are of immediate effect unlike another

category of States' obligations established by the ICESCR as for progressive implementation (General comment № 3: The nature of States parties' obligations (the CESCR (1990), para. 1); the Limburg Principles (ECOSOC, 1986), para.(s) 22, 35–41, 45)).

The legal construction of States' obligations under the ICESCR (1966) is both negative and positive, obliging States to use "all appropriate means", including "legislative, administrative, judicial, economic, social and educational measures" (the ICESCR, Art. 2 (1); the General comment № 3 (the CESCR (1990), para.(s) 3, 5; The Limburg Principles (ECOSOC, 1986), para. 17).

The main enforcement mechanisms related to the prohibition of gender discrimination in the labour market established by the ICESCR (1966) are the following: (i) State and "shadow" reporting on the compliance with the ICESCR obligations (the ICESCR, Art. 16); (ii) State and "shadow" reporting on the implementation of the ICESCR under the UPR; (iii) individual communication by victims of a State's violation of its obligations under the ICESCR (in the case of State's ratification of the Optional Protocol to the ICESCR (Optional Protocol to the ICESCR, 2008) through the CESCR; (iv) interstate communication and inquiry procedure in the case of State's ratification of the Optional Protocol to the ICESCR (2008) and separately recognition of the relevant competence of the CESCR; (v) communications under the special procedures of the UN Human Rights Council to the special rapporteur or working group (country-specific or thematic, e.g. Working Group on Discrimination against Women and Girls).

Therefore, the ICESCR (1966) establishes an anti-discrimination system of international legal standards in relation to the labour market, which is based on: i) a system of 3 fundamental rights: right to work, right to just and favourable conditions of work, trade unions' rights; ii) prohibition of discrimination; iii) voluntary State participation in the most of enforcement mechanisms. The peculiarity characterising the prohibition of gender discrimination is the existence of both a general prohibition of discrimination based on "sex" and a specific prohibition based on the distinction between the two sexes as "men" and "women". Accordingly, despite a historically determined restrictive approach to gender in Art. 3 of the ICESCR, the existence of a general prohibition of discrimination based on "sex" and the use of the pronoun "everyone" in relation to the labour rights creates the conditions for an evolutionary interpretation of the ICESCR provisions and the extension of its guarantees to other genders. This approach is also supported by the CESCR (General comment № 23 (2016) on the right to just and favourable conditions of work (the CESCR (2016), para. 11)) as well as HRC (*Toonen v. Australia*, 1994; *Edward Young v. Australia*, 2003; X *v. Colombia*, 2007).

The significant legal system for ensuring gender equality in the labour market is established by the International Labour Organisation (the ILO). Since its foundation in 1919, the question of the observance of

equality of opportunity and treatment has been one of the fundamental objectives of the ILO. The original ILO Constitution indicated that this principle is among those that are "of special interest and urgent importance" (Humblet, M. et al., 2001, p. 61). The contemporary ILO jurisprudence related to gender equality in the labour market includes:

(i) Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia) (Annex to the ILO Constitution) (1944) that has an obligatory character of an international treaty and establishes the right of "all human beings, irrespective of … sex, to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity" (Art. 2);

(ii) the ILO Declaration on Fundamental Principles and Rights at Work (1998) that has an obligatory character as "the general principles of law recognized by civilized nations" (the ICJ Statute, Art. 38 (1) (c)) (Zharylouskaya, Ulyashyna (2022), p. 66) and qualifies the elimination of discrimination in respect of employment and occupation as a "principle concerning the fundamental rights" which are the subject of the ILO Conventions and therefore binding for all States, even those who have not signed the relevant Conventions. The ILO Declaration does not establish the grounds for prohibited discrimination in the labour market, therefore, it is possible to be guided by a broad interpretation and include the prohibition of gender discrimination;

(iii) four so-called gender equality conventions that have an obligatory character of international treaties: Discrimination (Employment and Occupation) Convention (Convention 111) (1958); Equal Remuneration Convention (Convention 100) (1951); Workers with Family Responsibilities Convention (Convention 156) (1981); Maternity Protection Convention (Convention 183) (2000).

Table 1. Non-discrimination labour standards based on the ILO gender equality conventions

№	The ILO Convention	Main non-discrimination provision	Gender interpretation	State parties
i	Discrimination (Employment and Occupation) Convention (Convention 111) (1958)	- provides a legal definition of the discrimination (Art. 1 (1)), including "sex" as a separate ground; - establishes as justification from the scope of discrimination "distinction, exclusion or preference in respect of a particular job based on the inherent requirements" (Art. 1 (2)) and measures of "protection or assistance" (Art. 5); - establishes a range of general State policy obligations with a view to eliminating any discrimination	broad, as "sex"	175

ii	Equal Remuneration Convention (Convention 100) (1951)	- establishes a State obligation to promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value; - establishes a range of general State policy obligations	narrow, as "men and women" (binary)	174
iii	Workers with Family Responsibilities Convention (Convention 156) (1981)	- establishes a State obligation for the aim of creating effective equality of opportunity and treatment for men and women workers to make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities (Art. 3); - establishes a range of general State policy obligations and specific practical obligations (to enable workers with family responsibilities to exercise their right to free choice of employment; to develop or promote community services, public or private, such as child-care and family services and facilities, etc.)	narrow, as "men and women" (binary)	45
iv	Maternity Protection Convention (Convention 183) (2000)	- includes a wide range of specific State obligations in relation to specific areas: health protection; maternity leave; employment protection and non-discrimination; leave in case of illness or complications; benefits; breastfeeding mothers; - in relation to the employment protection and non-discrimination a State obliged to adopt appropriate measures to ensure fulfillment of the following guarantees: (i)prohibition to terminate the employment of a woman during her pregnancy or absence on leave or during a period following her return to work (with exceptions); (ii) guaranteed right to return to the same position or an equivalent position paid at the same rate at the end of maternity leave; (iii) prohibition of discrimination on the basis of maternity in employment, including access to employment (*inter alia* prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment (with exceptions)).	narrow, as "women"	45

Particular features of the gender equality conventions are the establishment of a broad range of targeted anti-discrimination guarantees in the labour market and the use of a historically determined restrictive understanding of gender as "men and women", with the exception of Discrimination (Employment and Occupation) Convention (Convention 111) (1958) on the prohibition of discrimination *per se*. The latter, because of its fundamental nature, creates the possibility of a broader interpretation of gender;

related conventions: Employment Policy Convention (Convention 122) (1964), which has a binding character as an international treaty. The Convention defines "freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of … sex" as an imperative goal of State employment policy;

"soft" law instruments used as means of interpretation (Vienna Convention, 1969, Art. 31; the ICJ Statute, 1948, Art. 38 (1) (d)): the ILO Resolution concerning gender equality at the heart of decent work (2009); the ILO Recommendations: Discrimination (Employment and Occupation) Recommendation № 111 (1958); Equal Remuneration Recommendation № 90 (1951), Workers with Family Responsibilities Recommendation № 165 (1981), etc.; the ILO General Surveys: "Achieving gender equality at work" (2023), "Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008" (2012); "Equality in Employment and Occupation" (1996); "Workers with Family Responsibilities" (1993); "Equality in Employment and Occupation" (1988), etc.

The combination of a narrow and a broad understanding of "sex" by the ILO jurisprudence gives rise to a "living" interpretation of the ILO anti-discrimination standards and the finding of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) that "sex discrimination goes beyond distinctions based on biological characteristics (sex), and also includes unequal treatment arising from socially constructed roles and responsibilities assigned to a particular sex (gender)" (General Survey, the ILO (2023), para. 77; General Survey, the ILO (2012), para. 782). In turn, the ILO learning guide "Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work" (2022) defines "sex" as the classification of a person as having female, male and/or intersex sex characteristics based on their gender identity. This approach was also approved by the General Survey (the ILO (2023)).

The ILO enforcement mechanisms are based on the tripartite system (excludes an individual communication with the ILO bodies) and include the following: (a) regular supervision mechanisms: States and workers' and employers' associations reporting to the Committee of Experts on the Application of Conventions and Recommendations and as an approving authority - Conference Committee on the Application of Standards; (b) special procedures: (i) procedure for representations

on the application of ratified Conventions (the ILO Constitution, 1919, Art. 24); (ii) procedure for complaints against the ILO members over the application of ratified Conventions by (a) the ILO members, (b) delegates of a General Conference of representatives of the Members, or (c) by own motion of a Governing Body by *inter alia* establishing the Commission of Inquiry and recourse to the ICJ (the ILO Constitution, Art.(s) 26-32); (iii) Special procedure for complaints regarding freedom of association by Freedom of Association Committee as less related to the gender equality issues and as the final - (iv) application of measures under Article 33 of the ILO Constitution in the case of a responsible State failure to carry out the recommendation of the Commission of Inquiry or the ICJ.

Specific non-discrimination standards that are related to the gender ground

Specific non-discrimination standards that are related to the gender of the workers are the CEDAW (1979) which has a binding character as an international treaty.

The CEDAW (1979) enshrines a complect of gender anti-discrimination guarantees related to the labour market by Art. 11. These guarantees are divided into three groups: (i) in the area of employment; (ii) in the field of discrimination based on marriage or maternity; (iii) general State obligation in relation to the adoption of municipal law.

Table 2. Non-discrimination labour standards based on the CEDAW (1979)

Guarantees		
in the area of employment (formulated as a woman' rights)	in the field of discrimination based on marriage or maternity (formulated as a State obligations)	general (formulated as a State obligations)
the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment	(i) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status	(i) to review, revise, repeal and extend periodically protective legislation in the light of scientific and technological knowledge

The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training	(ii) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances	
The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work	(iii) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities	
(iv) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave	to provide special protection to women during pregnancy in types of work proved to be harmful to them	
(v) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction		

The applicability of the CEDAW (1979) non-discrimination clause is based on simultaneous application of general non-discrimination clause of Art.(s) 2 and 3 and special non-discrimination clause related to the labour market of Art. 11.

The system of the CEDAW jurisprudence also includes several instruments of "soft" law such as general recommendations of the Committee on the Elimination of Discrimination against Women (hereinafter — *CEDAW Committee*): General recommendation № 28 on the core

obligations of States parties under article 2 (CEDAW Committee (2010)); General recommendation № 26 on women migrant workers (CEDAW Committee (2008)); General recommendation № 13: Equal remuneration for work of equal value (CEDAW Committee (1989)), etc. The legal significance of CEDAW Committee's general recommendations is the same as the general comments of CESCR.

With regard to the CEDAW interpretation of gender, CEDAW Committee stresses that despite the CEDAW reference only to sex-based discrimination, interpreting Art. 1 together with Art.(s) 2 (f) and 5 (a) indicates that CEDAW covers gender-based discrimination against women. The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. Not only sex but gender identity and sex orientation needs to be taken into account (General recommendation № 28 on the core obligations of States parties under article 2 (CEDAW Committee (2010), para.(s) 5, 18); *ON and DP v Russian Federation*, 2020, para. 7.9; Seem (2020); Holtmaat (2015)).

The main enforcement mechanisms related to the prohibition of gender discrimination in labour market established by the CEDAW (1979) are the following: (i) State and "shadow" reporting on the fulfillment of obligations (the CEDAW, Art. 18); (ii) State and "shadow" reporting on the implementation of the CEDAW under the UPR; (iii) ndividual communication from victims of a State's violation of its obligations under the CEDAW to the Committee on the Elimination of Discrimination against Women (in the case of State's ratification of the Optional Protocol to the CEDAW (Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999); (iv) interstate communication by arbitration procedures and the ICJ as a "last resort" (the CEDAW, Art. 29) with the State's right to make a reservation; (v) communications under the special procedures of the UN Human Rights Council to the special rapporteur or working group (country or thematic, e.g. Working Group on Discrimination against Women and Girls).

The Yogyakarta Principles (2006) and the Yogyakarta Principles plus 10 (2017)

The specific legal acts of "soft" law that need to be used as a means of interpretation (the Vienna Convention, 1969, Art. 31; the ICJ Statute, 1948, Art. 38 (1) (d)) for the topic are the Yogyakarta Principles (2006) and the Yogyakarta Principles plus 10 (2017) that include a specific provision in relation to sexual orientation and gender identity as grounds for prohibited discrimination as a general prohibition and in relation to the right to work.

Conclusions

There is an extensive system of international human rights standards enshrining the prohibition of discrimination in labour relations, including on the basis of gender. On the worldwide level, it is represented by such legal instruments as the Universal Declaration (1948), the ICCPR (1966), the ICESCR (1966), the CEDAW (1979), and the ILO jurisprudence, and their enforcement mechanisms.

Despite the apparent multiplicity of relevant legal norms of international law, one can identify three main challenges for the legal regulation of gender aspects of the labour market:

(i) due to historical deliberation, existing international legal standards are mostly based on a binary conception of sex as a basis for gender discrimination, including in the area of the labour market. Although implementation practices of international bodies have started to use a "living" interpretation of sex as a ground for prohibited discrimination, which includes both sex-based discrimination (based on biological sex and sexual orientation) (HRC), and also begin to introduce gender-based discrimination (based on gender identity as well as with recognition of non-binary sex) into legal practice (the ILO, CEDAW), legal concepts of sex-based and gender-based discrimination should be further developed through both a holistic theoretical analysis and the incorporation of relevant legal norms into acts of "hard" international law;

(ii) the legal status of men with family responsibilities does not have enough legal regulation on the level of obligatory international guarantees due to the still existing typo-determination of women as the main actors with family responsibilities and caring for children at both national and international legal levels;

(iii) enforcement mechanisms are weak enough and their implementation is often conditional on the "goodwill" of a State concerned without the possibility of international external enforcement (except for certain ILO mechanisms, which, however, are procedurally difficult to enforce due to the tripartite system of organisation).

References

Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (2017). Retrieved from http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf.

CEDAW Committee (1989). General recommendation №13: Equal remuneration for work of equal value. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCEDAW%2FGEC%2F5832&Lang=en.

CEDAW Committee (2008). General recommendation №26 on women migrant workers. CEDAW/C/2009/WP.1/R. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2F2009%2FWP.1%2FR&Lang=en.

CEDAW Committee (2010). General recommendation №28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW/C/GC/28. Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement.

CEDAW Committee (2020). *ON and DP v Russian Federation*. CEDAW/C/75/D/119/2017. Retrieved from https://juris.ohchr.org/casedetails/2709/en-US.

Charter of the United Nations (1945, June 26). Retrieved from https://www.un.org/en/about-us/un-charter/full-text.

Constitution of the International Labour Organization. (1919, April 11). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#A24.

Discrimination (Employment and Occupation) Convention (Convention 111) (1958, June 25). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111.

ECOSOC (1979). Resolution 1979/43. Retrieved from https://digitallibrary.un.org/record/33950?ln=en.

ECOSOC (1985). Resolution 1985/17. Retrieved from https://ap.ohchr.org/documents/e/ecosoc/resolutions/e-res-1985-17.doc.

Employment Policy Convention (Convention 122) (1964, July 9). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312267.

Equal Remuneration Convention (Convention 100) (1951, June 29). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100#:~:text=1.,for%20work%20of%20equal%20value.

Holtmaat, R. (2015). Enhancing LGBTI Rights by Changing the Interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women. *Nordic Journal of Human Rights*, 33 (4): 319-336.

Humblet, M. et al. (2001). *International labour standards: a global approach*. Geneva: International Labour Organization.

International Covenant on Civil and Political Rights (1966, December 16). United Nations. 999 UNTS 171.

International Covenant on Economic, Social and Cultural Rights (1966, December 16). United Nations. 993 UNTS 3.

Maternity Protection Convention (Convention 183) (2000, June 15). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C183,/Document.

Nowak, M. (2005). *U.N. Covenant on Civil and Political Rights. CCPR Commentary*. 2nd revised ed. N. P. Kehl: Engel, Publisher.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999, October 6). 2131 UNTS 83.

Optional Protocol to the International Covenant on Civil and Political Rights Rights (1966, December 16). United Nations. 999 UNTS 171.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008, December 10). 2922 UNTS.
Simm, G. (2000). Queering CEDAW? Sexual orientation, gender identity and expression and sex characteristics (SOGIESC) in international human rights law. *Griffith Law Review*, 3: 374–400.
Taylor, P.M. (2020). A *Commentary on the International Covenant on Civil and Political Rights*. Cambridge: Cambridge University Press.
The CESCR (1990). General comment № 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant). Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FGEC%2F4758&Lang=ru.
The CESCR (2005). General comment №16 (2005). The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/2005/411. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2005%2F4&Lang=ru.
The CESCR (2005). General comment № 18 on the right to work (article 6 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/GC/186. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F18&Lang=ru.
The CESCR (2009). General comment №20. Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). E/C.12/GC/20. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F20&Lang=ru.
The CESCR (2016). General comment № 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights). E/C.12/GC/23. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F23&Lang=ru.
The Convention on the Elimination of All Forms of Discrimination Against Women (1979, December 18). 1249 UNTS 1.
The HRC (1989). General Comment № 18: Non discrimination. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGEC%2F6622&Lang=ru.
The HRC (1994). *Toonen v. Australia*. Communication № 488/1992, CCPR/C/89/D/1361/2005. Retrieved from https://juris.ohchr.org/casedetails/702/en-US.
The HRC (2000). General Comment № 28. Article 3 (The equality of rights between men and women). HRI/GEN/1/Rev.9 (Vol. I). Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.10&Lang=ru.
The HRC (2003). *Edward Young v. Australia*. Communication №941/2000, CCPR/C/78/D/941/2000. Retrieved from https://juris.ohchr.org/casedetails/1076/en-US.
The HRC (2004). General Comment No. 31 [80]. The Nature of the General Legal Obligation Imposed on States Parties to the Covenant. CCPR/C/21/Rev.1/Add. 13. Retrieved from https://tbinternet.ohchr.org/_layouts/15/

treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.13&Lang=ru.
The HRC (2007). X *v. Colombia.* Communication № 1361/2005, CCPR/C/89/D/1361/2005. Retrieved from https://juris.ohchr.org/casedetails/1338/en-US.
The ILO (1951). Equal Remuneration Recommendation № 90. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:312428#:~:text=Where%20appropriate%20for%20the%20purpose,concerned%2C%20establish%20or%20encourage%20the.
The ILO (1958). Discrimination (Employment and Occupation) Recommendation № 111. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R111.
The ILO (1981). Workers with Family Responsibilities Recommendation № 165. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R165.
The ILO (1988). General Survey "Equality in Employment and Occupation". Retrieved from https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm.
The ILO (1993). General Survey "Workers with Family Responsibilities". Retrieved from https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm.
The ILO (1996). General Survey "Equality in Employment and Occupation". Retrieved from https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm.
The ILO (2009). Resolution concerning gender equality at the heart of decent work. Retrieved from https://www.ilo.org/gender/Events/WCMS_187671/lang--en/index.htm.
The ILO (2012). General Survey "Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008". Retrieved from https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm.
The ILO (2022). Learning guide "Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work". Retrieved from https://www.ilo.org/global/WCMS_846108/lang--en/index.htm.
The ILO (2023). General Survey "Achieving gender equality at work". Retrieved from https://www.ilo.org/global/standards/information-resources-and-publications/WCMS_164145/lang--en/index.htm.
The ILO Declaration on Fundamental Principles and Rights at Work (1998). The ILO. Retrieved from https://www.ilo.org/declaration/lang--en/index.htm.
The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986). E/CN.4/1987/17. Economic and Social Council. Retrieved from https://www.refworld.org/pdfid/48abd5790.pdf.
The UN Human Rights Council (2006). Resolution A/RES/60/251. Retrieved from https://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf.
The Universal Declaration of Human Rights (1948, December 10). United Nations. Retrieved from: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2006). Retrieved from https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf.

UNGA (2015). Transforming Our World: the 2030 Agenda for Sustainable Development. A/RES/70/1. Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/092/43/PDF/N1609243.pdf?OpenElement.

Vienna Convention on the Law of Treaties. 23 May 1969. 1155 UNTS 331.

Workers with Family Responsibilities Convention (Convention 156) (1981, June 2023). The ILO. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C156#:~:text=This%20Convention%20applies%20to%20men,or%20advancing%20in%20economic%20activity.

Zharylouskaya, M., Ulyashyna, L. (2022). International obligations of the Republic of Belarus in the field of human rights and trade union rights: a comparative legal analysis of the right to freedom of association. *International Academic Journal*, 3 (1): 66–81.